The Solicitors' Journal

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Current Topics.

Two Careers.

THE death of LORD ROMER on 19th August at the age of seventy-eight removed from our midst a vivid and charming character, one who was familiar to all who have practised in the Chancery Division in the last half-century. Before his call to the Bar in 1890, MARK LEMON ROMER had been a scholar of Trinity Hall, Cambridge, and had graduated as a junior optime in the Mathematical Tripos. His success at the Chancery Bar was outstanding, and in 1906 he took silk. In 1922 he was appointed a judge of the Chancery Division, and in 1929 he was appointed a Lord Justice of Appeal. In 1938 he became BARON ROMER of New Romney, Kent, and a Lord of Appeal in Ordinary. He also presided from time to time at the Judicial Committee of the Privy Council, where he had frequently appeared with distinction as an advocate before his elevation to the Bench. Both as a judge of pre-eminent ability and as a man of innate gentleness and kindness he will long be remembered. Another sad loss that we mourn this week occurs through the death of Dr. A. E. W. HAZEL, C.B.E., LL.D., K.C., Principal of Jesus College, Oxford. Although a practical lawyer in only a minor sense, generations of law students, future solicitors and barristers, will remember his lucid expositions in Oxford and London of constitutional law and legal history. It was not only for his teaching gifts that his lectures were crowded, and even overcrowded, but also for his reputation as a high authority in his chosen subjects. Originally a classical scholar of the college in which he later was to be Principal, he obtained a first in Classical Moderations, a second in *Literæ Humaniores*, a first in the Honours School of Jurisprudence, and a second class in his B.C.L. examination. He also held the Eldon and the Barlow law scholarships, the prize of the Council of Legal Education for constitutional law and legal history, and a certificate of honour at the Bar examination. Besides being a fellow and tutor of his own college, Jesus, he was Reader in constitutional law and legal history at the Inns of Court from 1910 to 1926, University lecturer in criminal law and evidence at Oxford from 1915 to 1922, and All Souls Reader in English law from 1922 to 1933. Although he chose the academic life, there was nothing academic about his mentality, and among his practical activities he served as a Member of Parliament from 1906 to 1910, was Recorder of Burton-on-Trent from 1912 to 1938, was deputy-controller of the priority department of the Ministry of Munitions in the 1914–18 war, and became Assessor of the Chancellor's Court in 1925. Dr. HAZEL served with zest the cause of legal education and gave to life far more than he ever took from it.

Solicitors in Scotland.

THE organisation of solicitors under one representative body does not appear to have proceeded on the same lines in Scotland as in this country, if one may judge by a statement recently made by the General Council of Solicitors and published in the *Scots Law Times* of 12th August. The Council was constituted by the Solicitors (Scotland) Act, 1933, to represent all existing societies of solicitors in Scotland, as well as solicitors who were not members of any existing society. "The statutory duties of the Council were confined," the statement says, "to the training and admission of solicitors, and their registration and discipline. Other questions affecting solicitors continued to be dealt with by the Joint Legal Committee, consisting of representatives of the six largest societies of solicitors. An amending Bill in 1937 failed to pass its second reading in the Commons, and when it was again introduced in 1938, with amendments, time could not be found for its committee stage, owing to the state of public business at that time. When war broke out no private members' bills could be introduced. There is now some prospect that, with the goodwill of the law officers of the Crown, a Bill which has the unanimous approval of the profession may be passed. A draft of a new Bill is at present being considered by the societies represented on the General Council. In the meantime, the General Purposes Committee of the General Council has taken over the functions of the Joint Legal Committee. In its statement the Council says that if the English method is adopted, of control by a single society, subject to the approval of a two-thirds majority of English solicitors, the importance of the societies throughout Scotland which are represented on the General Council would be lessened, and this might not be to the advantage of the profession as a whole. The contrary view, it is stated, is that the existing individual societies should be kept as alive and vigorous as possible, their members being encouraged to take a real interest in the affairs of their respective societies, contributing vigorously to the work of the General Council, which should act as a body for co-ordinating and giving public expression to the view of the profession as a whole. The Council's statement was approved for publication at a meeting held on 28th July, when it was also agreed that the regulations for the admission of solicitors should be amended so as to enable the Council, in appropriate cases, to exempt from the first and second professional examinations English solicitors who desire to be admitted to practise in Scotland, and also in such cases to dispense with attendance at university classes in Scots law and conveyancing.

Extortionate Rents.

ONE of the difficulties in the way of enforcing s. 10 of the 1920 Rent Act, penalising landlords who charge extortionate rents for furnished dwelling accommodation, has been the great reluctance of magistrates to find that a rent which is proved to have been excessive is extortionate. Another and almost equally great difficulty has been the varying quality of both the furniture and the accommodation provided, which has made the fixing of a standard of value a matter of opinion on which the most skilled experts cannot agree. The Inter-Departmental Committee on Rent Restrictions is at present considering various suggestions, including that of The Law Society, for the control of furnished dwelling accommodation, but for the present we still have to contend with the practical difficulties raised by the use of the word "extortionate." The Leeds magistrates in a case on 11th August in which a defendant was charged under s. 10, convicted him and imposed fines totalling £160 and £30 costs. The defendant had rented a house for £45 a year. Having furnished the house, he let it to six sub-tenants at rents which aggregated £6 a week. A reasonable total rental, the prosecution alleged, was £4 3s. a week. The excessive charge to six sub-tenants in another house was alleged to be £153 a year. In imposing the fines the chairman of the magistrates stated that they would not decide what were the proper rents in the case as it was "high time that the Government set up a tribunal to deal with these matters." The magistrates in this case do not seem to have experienced any reluctance to convict, in spite of the fact that, with all the guidance on the subject given by the prosecution, they were unable to say what was a reasonable rent. In spite of this decision, we submit that it is reasonable to hold that magistrates will continue to be reluctant to find that a rent which even on the clearest evidence is excessive is in fact extortionate. On the other hand, there is no reason why local authorities should hesitate to prosecute in cases where there is any doubt, especially since, as was revealed in the Leeds case, the Ministry of Health has instructed local authorities to requisition property in cases where tenants or sub-tenants receive notices to quit while proceedings are pending on the ground of extortionate rents.

Housing Design and Planning.

ALL housing authorities and county councils received on 17th July from the Ministry of Health a booklet called "Design of Dwellings" containing important recommendations on the design and standards of post-war houses in a report submitted to the Minister of Health (Mr. HENRY WILLINK) by his Central Housing Advisory Committee, and the report of a study group of the Ministry of Town and Country Planning on site planning and layout in relation to housing. The first report is confined to "the types of permanent dwelling commonly built by local authorities," although the Committee point out that the standards they recommend are equally applicable to houses built by private enterprise. The report states that "we have now a school of modern domestic architecture which can hold its own with the work of any other country. This is an outstanding national asset, and we must ensure that the fullest advantage is taken of it." It deals with the standards of modern housing design in the greatest of detail. It points out that rural housing must not be of a lower standard than urban housing; that extra storage space and larger outbuildings are necessary in the country; and that there should be the widest possible extension to rural areas of public services, particularly piped water and electricity. After recording the objections to the old-fashioned type of terraced house—lack of privacy, noise, the absence of windows on the third side of the house, and difficulties of access to the back door—the Committee state their belief that these objections can now be largely overcome, and that the "continued prejudice against terraced houses is mainly because so few people have had the experience of living in a well-designed modern terrace." The report refers to the means of overcoming the objections by sound insulation, skilful planning for daylight and convenient access to the back door. With regard to flats, the report refers to the common defects of "dreary and barracklike appearance and surroundings; the absence of lifts; unsatisfactory means of access; difficulties of removing refuse; cramped accommodation; inadequate laundry facilities; absence of gardens; and lack of communal amenities." Means of overcoming these difficulties are discussed, including the automatic passenger lifts provided by the Leeds Corporation on their large estate of flats at Quarry Hill and the water-borne system of refuse disposal which is installed there. The Committee concludes that: "There may be an inevitable interval before the present inflated costs can be brought into a workable relationship with the cost of living, but we are convinced that unless this is done, the Government's programme of three to four million houses will never be completed." The report on site planning and layout in relation to housing states that with regard to the internal redevelopment of existing towns unquestioned acceptance of the old pattern as the basis for the new is likely to perpetuate central congestion and bad development. As regards the extension of existing large towns, serious consideration should be given to the preservation of green belts or wedges as a means of limiting the continuous growth of existing large towns. The preparation of short-term housing programmes without reference to a regional survey, will merely encourage continuous and unrelated growth. The creation of satellite towns, the report states, should be considered where there is economic justification for them, and where the extension of existing small towns takes place, great care should be taken to plan the old and new development so as to produce or preserve a sense of community. In general, planning schemes should restrict the area to land immediately available for housing, to a total more proportionate to need, and should aim at promoting housing of *all* types, where required. The report also recommends neighbourhood planning, and a table is included giving the suggested minimum land areas required for different purposes for neighbourhood units at varying densities. The report also discusses the relationship between building densities and desirable standards of space about individual buildings, and suggests that in future more scientific measures of density planning will be necessary. Road layout and parking is also discussed, and it is pointed out that England has already more cars in relation to road mileage than any other country in the world, and provision for car-parking should therefore be on a generous scale. The report also contains much interesting information and advice on architectural form.

The Finance Acts.

CERTAIN anomalies and difficulties arising under the Finance Acts have, it is stated in the July issue of *The Law Society's Gazette*, been the subject of discussions between Sir RANDLE HOLME and Mr. ARTHUR FFORDE on behalf of the Council of The Law Society and the Board of Inland Revenue. A special committee consisting of members of the Council, and members of the Council of the Institute of Chartered Accountants was set up to consider Pt. VI of the Finance Act, 1944, which contains provisions to deal with some of the points raised in a letter sent to the CHANCELLOR OF THE EXCHEQUER in April, 1943, setting out representations of the Council of The Law Society and the Council of the Institute of Chartered Accountants. Before the committee stage of the Bill, the Board had a further meeting with Sir RANDLE HOLME and Mr. LESLIE E. PEPPIATT representing the Council, and three representatives from the Institute of Chartered Accountants. A number of points emerged. In the opinion of the Inland Revenue, on the true construction of s. 46 (1) of the Finance Act, 1940, assets of a company could not be deemed to pass on death to a greater extent than 100 per cent. of the value of those assets at the date of death. The *Gazette* also states that the Inland Revenue would give further study to the position of a company, and particularly a public company, in respect of whose assets a contingent liability to estate duty would arise on the deaths of persons now living who had made transfers of assets to the company. In this connection representatives of the Institute remarked that an accountant giving a certificate in respect of the accounts of such a company might be in doubt as to whether he ought not to qualify his certificate in some way, having regard to the contingent liability to estate duty. The Inland Revenue also promised to study the case where owing to a reduction of income of a company during the three years before the death of a debenture-holder or holder of preference shares who had made a transfer of assets to the company, a company paid debenture interest out of reserves, with the result that an unduly high proportion of the company's assets would be attributable to the interest in the company of the deceased transferor, and accordingly became liable to estate duty. It was agreed that no claim to estate duty arose under s. 46 of the Finance Act, 1940, where a company sustained an aggregate loss during the relevant period, even though benefits were received by the transferor during that period. The Inland Revenue representatives also stated that s. 51 (4) of the Finance Act, 1940, dealing with reasonable remuneration, is treated as applying to pensions.

Civil Servants and the Law.

IN a prosecution at Wealdstone on 18th August, a magistrate, Mr. ALFRED DENVILLE, M.P., questioned the validity of the Essential Works Order. For the prosecution it was stated that the Essential Works Order had not and could not be laid before Parliament. Mr. DENVILLE then said: "This question of civil servants making the laws of this country has got to be thrashed out." The bench eventually came to the conclusion that the order was valid, and imposed a fine. The question has, of course, been "thrashed out" over and over again in Parliament, ever since the late LORD HEWART published his "New Despotism," and the Committee on Ministers' Powers reported on the matter. Parliament cannot be expected to work out the full details of all the legislation which our complicated modern civilisation demands, but it can and must be ultimately responsible for all the orders the making of which it necessarily delegates. At the end of a thorough debate on the subject in the Commons in May of this year the HOME SECRETARY stated not only that the Government were most anxious that delegated legislation should be subject to effective Parliamentary control, but also that they proposed that a scrutinising committee of the House with the assistance of Sir CECIL CARR as legal adviser should consider individual rules and orders with particular reference to whether the enactment under which it was made excluded it from challenge in the courts. So long, therefore, as Parliament's check is effectively maintained, we need have no undue fears of law-making by State departments acting under their statutory powers. The real danger arising from departmental or delegated legislation is to be seen in the tendency, accelerated during the present war, to constitute departmental tribunals which completely oust the jurisdiction of the courts of justice and in which the subject is often denied the right of representation by solicitor or counsel. This tendency to unite judicial with administrative functions is not only an unconstitutional joinder of functions which are properly separate, but it also weakens the authority of the courts by gradual encroachment. "It is obvious," said LORD HEWART in "The New Despotism," "that the critics of departmental despotism desire, not litigation, but that fairness of decision which, while it renders litigation in general unnecessary, is enormously encouraged and fostered by the prevailing knowledge that, in case of need, there is a law court in the background." The Committee on Ministers' Powers recommended that "judicial as distinguished from quasi-judicial functions should normally be entrusted to the ordinary courts of law, and their assignment by Parliament to a Minister or Ministerial tribunal should be regarded as exceptional, and requiring justification in each case." This recommendation needs fresh emphasis in the conditions prevailing to-day.

The Public Authorities Protection Act.

UNDER the heading "Shelter Disaster at Bethnal Green," *The Times* of 18th August published an interesting letter from Mr. E. HOLROYD PEARCE suggesting that an opportunity had now arisen to abolish the Public Authorities Protection Act, 1890. He wrote that its two main provisions—namely, that which deprives a plaintiff of his remedy if he does not start his action within twelve months, and that which compels him to pay a higher rate of costs if he is unsuccessful, are both diametrically opposed to modern conceptions. For many years now, the letter continued, we have been shifting unusual or insupportable burdens from the weak shoulders of the individual to the robust shoulders of the community. Sickness, unemployment, accident in the course of employment and various developments in social services

are all examples of the help that is given by the community to the individual in his need. Yet, wrote Mr. PEARCE, if a man is injured by the negligence of a public authority (which can usually command the deep resources of the rates) his remedy is taken from him, if he does not start within a special period, and he must pay more highly if he loses. He stated that logically there would seem to be a far stronger case for giving such protection to ordinary private defendants to whom litigation is often an undeserved and insupportable burden, and taking it away from public authorities. His conclusion, that the problem is a serious one since practising lawyers know how often injustice is caused by the Act, is one with which solicitors will agree.

Agriculture (Miscellaneous Provisions) Bill, 1944.

CLAUSE 7 of the Agriculture (Miscellaneous Provisions) Bill, 1944, proposes to extend the period of one year from the completion of the work for serving notice of claim for the expenses of improvements on the owner of agricultural land who has benefited thereby, under the various Agriculture (Miscellaneous War Provisions) Acts and the Agriculture (Miscellaneous Provisions) Acts. The proposed extension is to two years, and it is also proposed to make this provision apply retrospectively to cases where the period of one year has elapsed. The Council of The Law Society warns members in the July issue of *The Law Society's Gazette* that it is not safe to assume in connection with the purchase of agricultural land that no charge can arise under these Agriculture Acts where the land is bought after the period of one year has elapsed. In such cases, if the Bill in its present form becomes law, it will create a liability to a charge retrospectively. As a result of representations to the Minister, it is stated, an amendment has been put down to provide that a person, who purchased more than a year from the completion of the work, but before 13th May, 1944, when the contents of the Bill were first published, shall be protected, as he must have purchased in the belief that no charge could arise and without knowledge of the retrospective provisions. It is added that only a very small number of transactions will be affected by this provision.

Duress and Nullity.

THE *Irish Law Times* of 12th August, 1944 (78 Ir. L.T. Rep. 95), contains a report of *Griffith* v. *Griffith*, a case heard by HAUGH, J., of the Eire High Court, in which the petitioner asked for a decree of nullity of marriage on the grounds of duress and deceit. The facts were that the petitioner was an apprentice, aged nineteen, and living with his parents immediately before his marriage in November, 1925. In July, 1925, he spent an evening with the respondent, and attempted unsuccessfully to have intercourse. In November the respondent and her mother met the petitioner at his place of business, and informed him that he was the father of a child which the respondent was then carrying, and that he would be liable to criminal proceedings, which would be commenced if he did not marry the respondent. The petitioner told his father, who was on the premises, and his father became very angry and told him he must marry the respondent and not disgrace him. His father also told him that he was bound by the Catholic Church to marry the respondent and that he would be accountable for anything that might happen to her afterwards if he did not marry her. Believing what he was told by the respondent, her mother, and his own father, the petitioner married the respondent, but did not at first live with her. Later, when he commenced to live with her, he realised that his attempted connection of July could not have given her a child, and he taxed her with this. She then admitted that she had deceived the petitioner, and told him who was the father of her child. He then left her and did not return. The respondent's motion for alimony *pendente lite* had been dismissed, and she did not appear at the hearing. HAUGH, J., examined some English authorities on the court's power to pronounce nullity decrees generally (*Wright* v. *Elwood*, 1 Curt. 662, at p. 666, *per* Sir Herbert Jenner; *Briggs* v. *Morgan*, 3 Phill. Ecc. 325, *per* Sir William Scott; *J.* v. *J.*, L.R. 1 P. & D. 460; *Cuno* v. *Cuno*, 2 H.L. Sc. App. 300) and *McK.* v. *McK* (1936), 1 I.R. 177. The learned judge pointed out that the proceedings were not for divorce, as "no tribunal whatsoever in this country has power to grant divorce to parties validly married." The question was one of nullity of a contract, and not of the relationship resulting therefrom. He referred to *Scott* v. *Sebright*, 12 P.D., 21, at p. 23; Halsbury, "Laws of England," vol. 16, p. 278; *Swift* v. *Kelly*, 3 Knapp 257, at p. 293; and *Moss* v. *Moss* [1897] P. 263. In the last case the husband's petition was dismissed where the respondent had concealed from her husband at the time of her marriage the fact that she was then pregnant by another man. HAUGH, J., summarised the general principles as follows: "Duress or intimidation may produce a fear that may lead to marriage, but if such fear is justly imposed, the resulting marriage, when contracted, is valid and binding. Fraud or misrepresentation alone, and without duress, will not invalidate a marriage, unless it produces the appearance without the reality of consent." It was held that the facts justified the court in holding that the petitioner's marriage resulted from the threats of his father and the respondent's parents, that his consent was not real, and therefore that a decree of nullity must be pronounced.

Criminal Law and Practice.

Admissibility of Depositions taken in previous Cases.

SOLICITORS who practise in the police courts are well aware of the fact that there arise from time to time unexpected points in the law of evidence which must be dealt with at a moment's notice. Not infrequently the clerk to the justices is in an even more embarrassing position through the sudden emergence of a difficult point of law, and he is occasionally forced to temporise with a rule of thumb method of admitting everything that is not obviously hearsay, especially if it is clear that the matter is one on which there is bound to be a committal to a higher court.

In Leeds police court on 11th August a solicitor, who was putting forward the defence of insanity as an answer to a criminal charge against the person whom he was representing, found himself in some difficulty, because he was unable to call a doctor on whose evidence the defendant had previously been acquitted on another charge. He desired to put the previous deposition of the doctor in evidence on the present charge, as a matter of "history." The magistrates refused, partly on the ground that it was hearsay, and partly because no inquiries had been asked for or pursued at the office of the magistrates' clerk as to who had taken the note, and therefore it could not be proved in the proper manner at the time.

The common law rule which is applicable in this sort of case is that which makes testimony given by a witness in a civil or criminal proceeding admissible in a subsequent trial, provided (1) the proceedings are between the same parties or their privies, (2) the same issues are involved, (3) the party against whom or whose privy the evidence is tendered had on the former occasion a full opportunity of cross-examination, (4) the witness is incapable of being called on the second trial ("Phipson on Evidence," 8th ed., 1942, p. 430). It may be that the advocate in the Leeds case, if put to the test, might not have been able to prove all of these facts, especially No. (2), for although insanity on a previous occasion may well weigh with the court in deciding whether a defendant is insane on a subsequent occasion, the question is not one of weight, but of admissibility of evidence, and the issues, though similar, are not the same. As "Phipson" rightly points out, if any of the above requisites are absent, the evidence becomes hearsay, and not admissible.

When can it be argued that there is such similarity between the issues in the two cases that the evidence of the witness in the earlier case is admissible in the later case? In *R.* v. *Ledbetter* (1850), 3 Car. & Kir. 108, a commissioner of assize took the view that the Indictable Offences Act, 1848, s. 17, which prescribed the conditions under which the depositions of dead or absent witnesses may be proved where the charge is identical, repealed the previous common law which permitted the proof of witnesses' depositions in previous trials where the issue was substantially the same.

In *R.* v. *Beeston* (1854), 6 Cox 425, a deposition was read although the person who made it did so at the hearing of a charge of wounding, a charge of murder being later substituted as a result of the death of the wounded man. Alderson, B., thought that in *R.* v. *Ledbetter* the accused might not have had full opportunity of cross-examination, and Crowder, J., held that the authorities were quite decisive as to the rule of the common law.

An interesting note of *R.* v. *Shippey* (1871), is to be found in 12 Cox 161. The accused was charged with murder. The reporter rightly characterises the case as peculiar, as the crime was committed upwards of thirty years previously. The deceased was a police constable, and he had, thirty years previously, preferred a charge of assault against the prisoner and three others, who were all committed to the sessions. A few days before the sessions, the deceased was missing, and, as a result, it was alleged, the four defendants were acquitted. It was proposed by counsel, with great doubts, to put in the deposition of the deceased on the assault charge, in order to show that he was a material witness, and that there was therefore motive for the crime of murder. It was held not to be admissible. Here, obviously, the issues were not the same. In 1873, however, before Lush, J., at Chester Assizes in *R.* v. *Buckley*, 13 Cox 293, another case of murdering a policeman, the policeman's deposition in a previous trial of the prisoner on another charge was allowed to be read in order to show the part he played in the successful prosecution of the prisoner on a previous occasion, and the prisoner's motive in murdering him, i.e., vengeance.

The commoner type of case in which the evidence may be read is that of *R.* v. *Williams* (1871), 12 Cox 101, in which a charge before the magistrate of obtaining money by false pretences was altered on indictment to one of uttering a forged promissory note, the facts on which the different charges were made being the same. Montagu Smith, J., in that case, allowed the evidence to be used.

The other point made in the Leeds case, as to the mode of proof, is not difficult. Anyone who was present at the trial may prove what was said if he remembers it, judge, counsel or reporter (*Doncaster* v. *Day*, 3 Taunt. 262). If it is written, there should, as a rule, be no difficulty in agreeing to the accuracy of the magistrate's clerk's notes, subject to the deposition fulfilling the other conditions of admissibility.

A Conveyancer's Diary.

A Claim to Title Deeds.

I HAVE read with considerable interest the note of *Warren* v. *Gurney*, at Gloucester County Court, which appeared recently in "Our County Court Letter," 88 SOL. J. 254. The case seems to have raised interesting points, and I had hoped that a rather fuller report of it might have been obtainable. But unfortunately it is not.

The action was one for delivery up of the title deeds of a dwelling-house: that is to say, it was an ordinary action of tort for detinue of chattels. But title deeds are a peculiar sort of chattel, because "the title deed belongs to the estate and should go with it," *per* Pollock, C.B., in *Plant* v. *Cotterill*, 5 H. & N. 430, at p. 440. (Where the documents are so old as to be of merely historical interest, they are, of course, pure chattels: *Beaumont* v. *Jeffery* [1925] Ch. 1.) The question to be decided was thus primarily as to the title to the dwelling-house.

The house had been bought in 1929 for £300 by a certain testator. The plaintiff was this testator's daughter and had just married when the house was bought. The defendant was her brother, and was also the testator's executor. The conveyance on sale had been made to the plaintiff, but the testator had kept the deeds and the defendant still had them as his executor. The plaintiff and her husband had lived in the house from 1929 to 1939 and had never paid rent. Nor, I gather, had they made any other sort of payment in respect of the premises to the testator or his executor. The plaintiff had asked for the deeds, and the defendant had declined to hand them over. Down to this point there was no dispute as to the facts. The plaintiff contended that she was the beneficial owner, saying that the testator had bought the house as a wedding present for her. The defendant contended, on the contrary, that the £300 spent by the testator in buying the house was a loan from the testator to the plaintiff's husband, that the intention had been that it should be repaid by instalments, that no instalments or interest had ever been paid, and that the suggestion that it was a wedding present had only been made for the first time in 1943, fourteen years after the purchase. Finally, the defendant said that the reason why the conveyance was in the plaintiff's name was "to facilitate transfer when the loan was paid off."

We do not know what oral evidence was given or what impression the witnesses made; but on these bare statements of facts and contentions it seems puzzling that judgment was given for the defendant. The reasons therefor, as reported, were (1) that if the testator had intended the house as a wedding present it was incredible that he had never mentioned the circumstance, and (2) that, while a presumption of gift arose by reason of the conveyance being in the plaintiff's name, "this presumption was rebutted by the evidence for the defendant." What that evidence was we do not know, but it is reasonable to assume that it supported the story of a loan referred to above and the other consequent contentions of the defendant.

The plaintiff having been the testator's daughter, and the house having been bought with the testator's money and put into the plaintiff's name, there is no doubt at all that the ordinary resulting trust for the testator, as the person who put up the money, would give place to the presumption of advancement, unless clear evidence is available that the testator had some different intention at the date of the transaction. It is not enough to show that he later tried to deny that there had been an advancement. In the present case, the facts stated in the report do not nearly amount to the clear evidence that is needed to repel the presumption of advancement. On the contrary, they support it, as the transaction was contemporary with the plaintiff's wedding, which would be a very natural occasion for an advancement. With very great respect, it is surely beside the point to say that it is incredible that the testator would never have spoken of it as a wedding present if it had been one. The position is that equity starts by presuming that it was an advancement, and mere evidence of silence on the donor's part (for that is all of which we have a report) does not rebut the presumption at all. Anyway, if the house had been a wedding present, why should the testator, having given it to his daughter, say anything about it at all? Be all that as it may, we must continue our consideration of the case on the basis that the defendant produced evidence rebutting the presumption of advancement, and we can only suppose that this rebutting evidence followed the general lines of the defendant's contentions. Even taking as correct everything said by or on behalf of the defendant, it is very difficult to see the ground for his success. Let us accept the defendant's allegations and see where they lead us.

The defendant said that the £300 was a loan from the testator to the plaintiff's husband. Well and good. But as no interest or instalments had ever been paid, and as the loan was made fourteen years ago and there was no suggestion of acknowledgment, the loan was statute-barred six years after it was contracted, if it is to be treated as a simple contract loan. But, presumably, the defendant contended that, though the loan might by now be irrecoverable, there was a loan originally and not a wedding present: the house was bought with money lent by the testator to the plaintiff's husband, and the testator kept the deeds as security for that debt. On this footing the plaintiff would not come in at all: the house would belong to her husband, but would be equitably mortgaged, by deposit of title deeds, to the testator. But the legal fee simple was in fact conveyed to the plaintiff, presumably at the instance of her husband who had borrowed the money with which it was bought. These facts would again raise the presumption of advancement, this time as between husband and wife, because if property is bought by the husband (whether with his own or borrowed money is immaterial) and is put into the wife's name, equity presumes that he meant to make a present to her. Accepting the defendant's story as correct, one would thus get the position that the legal and equitable fee simple was in the plaintiff, but that the testator was an equitable chargee, holding the deeds as security for the repayment to him of money borrowed by the plaintiff's husband. On the defendant's contentions, that is the only reconstruction of the position that seems to make sense at all. But if that was what the defendant argued, he argued himself out of court; if the property was really the plaintiff's subject to a charge for repayment of the loan—and that seems to follow from the statement in the report that "the reason why the conveyance was in the plaintiff's name was to facilitate transfer when the loan was paid off"—the premises would belong absolutely to the plaintiff once the loan had gone, whether that occurred through repayment or through the loan otherwise becoming irrecoverable at law. But in the circumstances the loan clearly was statute-barred by the time the case came to trial: the limitation period in respect of money charged on property is twelve years; it would run from the date of the loan, in 1929, and there was no evidence of any part payment or acknowledgment operating to extend the time. On this footing, the plaintiff, as owner in legal and equitable fee simple, would clearly be entitled to recover the deeds from the ex-chargee. If one accepted the defendant's contentions as to the facts, this case is directly covered by *Lewis* v. *Plunket* [1937] Ch. 306, which was decided adversely to the ex-mortgagee and seems only to differ from the present case in that the mortgage there was apparently a legal mortgage, while the interest set up by the defendant here was at most an equitable charge. As I said, the decision is therefore most puzzling and it would have been interesting to know more of the facts. One point in particular would be likely to be significant, that is to say, who let the premises and took the rents and profits in the years between 1939 (when the plaintiff ceased actually to live there) and the time of action brought? It seems just possible to support the defendant's claim if it can be said that he or the testator was, during those years, mortgagee in possession, against whom time would, of course, not be running. I do not think that solution can be right, because, if it had been, the report would almost certainly have mentioned, as part of the defendant's case, that during those years the testator or his estate did get something from the property, though no interest or instalments were ever paid by the plaintiff's husband. The case is yet another reminder that we should not allow lay clients to make informal arrangements about the ownership of, or title to, land.

Landlord and Tenant Notebook.

Increase of Rent, etc., Acts: Transfer of Burden.

LEAVE was given by the court which decided *Winchester Court, Ltd.* v. *Miller* (1944), 60 T.L.R. 498 (by a majority) to appeal further; but the question raised was described by Luxmoore, L.J., as a new one, and is worth discussing as it stands.

What had to be decided was whether the Rent and Mortgage Interest (Restrictions) Act, 1920, which (after enacting that any transfer to a tenant of any burden or liability previously borne by the landlord resulting in terms less favourable to the tenant is to be treated as an increase in the rent) provides: "... any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act," availed the landlords of a flat in the following circumstances:—

On 1st September, 1939, the flat was held of the plaintiff by one P, at £195 a year, which then became its standard rent; P's lease containing a full repairing covenant in respect of internal repairs. This lease expired prematurely in May, 1941, and the plaintiffs then let the flat to the defendant on a quarterly tenancy at the rate of £160 a year, she covenanting to do repairs: but, fair wear and tear excepted. In May, 1942, a new agreement was negotiated in substitution for the 1941 one, but substantially the only difference was that the rent was made £165 per annum. In November, 1942, the plaintiffs served notice of increase to £195 per annum. In August, 1943, they served notice to quit expiring 15th November, 1943, and wrote offering a new tenancy at £195 a year to contain the 1939 repairing covenant or at £215 a year if she desired to continue on the basis of no liability for internal repairs and redecorations. After some correspondence, they served a notice "under the Rent Restrictions Act" stating that as from 15th November, 1943, the rent of the flat would be

£215 (plus certain agreed payments which can be left out of consideration). Litigation ensued; the county court decided that the £20 increase was not within the above-mentioned subsection; and the plaintiffs appealed.

Such a position might give rise to a number of disputed points, and I propose to mention, and briefly to discuss, at least one possible issue which was never raised. The following matters are arguable:—

(*a*) Does "transfer" mean "consensual transfer" only? This was the main issue. The next two were less strenuously argued.

(*b*) Is "transfer" limited to a change of terms between the same parties?

(*c*) Had the landlords by effecting one change waived all right to effect further changes?

(*d*) Was the proposed change the transfer of a burden or liability at all? This was not raised.

(*a*) The judgment of Scott, L.J., dealt with the question of consent being a necessary ingredient largely by reference to the broad policy of the Acts from 1915 onwards, which was to take rents out of consensual control and place them in the realm of status, but at the same time to have regard to past free bargaining when determining the rent under the status, i.e., the standard rent. Viewed in this light, the object of the subsection was to facilitate the maintaining of the balance.

This judgment, therefore, invokes the principle that "the Acts apply to houses, not people": "since the decision in *Barrett* v. *Hardy Bros.* [1925] 2 K.B. 220," said Greer, L.J., in *Lloyd* v. *Cook* [1929] 1 K.B. 103 (C.A.), "it has always been considered that the Rent Restrictions Acts operate *in rem* by attaching to a dwelling-house a standard rent."

(*b*) The contention that the transfer must be one effected between the same parties was based on the proposition that "a landlord" and "the tenant" in the part of the subsection set out above must refer to the parties to a particular demise. This was the ground on which the county court judge gave judgment for the tenant. It was most fully dealt with by MacKinnon, L.J., who rejected the suggestion of so limited an effect, and considered that "previous terms" would cover the terms of any previous tenancy which fixed the standard rent. The learned lord justice found support for this view by referring to the manner in which the standard rent is to be determined, regardless of the remoteness of the date, and the circumstances then obtaining, of the "last letting." This as it stood might result in the gravest injustice, and his lordship by a hypothetical example of an 1889 lease demonstrated that a further injustice would result from accepting the tenant's contentions.

I may mention here that in the course of his observations, MacKinnon, L.J., recalled that he had on a previous occasion pointed out that injustice might follow from the "last let" provision in the definition of "standard rent." This occasion must, I think, be that on which the learned lord justice adverted on the "hasty and ill-considered language of this statute" in *Davies* v. *Warwick* [1943] 1 K.B. 329 (C.A.): "If reliance be placed on a previous letting fifty or five hundred years ago . . . if the landlord proves that the previous letting was an act of charity at a nominal rent, etc." (and, incidentally, his lordship then said *obiter* that apparently a change in the matter of liability for repairs would make no difference). In the "Notebook" I have since submitted that the case is somewhat overstated, because the attention of the court was not drawn to the second part of the proviso to s. 12 (1) (*a*) of the 1920 Act: ". . . where at the date by which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent." This does alleviate some of the injustice in the case of a nominal rent. I see fit to mention this again because exaggeration may mar a good case; and the judgment formed, I think, the basis of some observations recently broadcast by the "Can I help you" service of the B.B.C. Indeed, the speaker gave similar hypothetical instances of lettings fifty or five hundred years ago; and it is a curious fact that the proviso would operate in the one case of the more recent "first letting," but not in the other case: there was no rating in 1444!

(*c*) Scott, L.J., considered the argument that a change in the terms of the original tenancy agreement occurring between the date of the original letting which determined the standard rent and the date when a claim was made under the subsection a plausible one, but that it failed because it ignored the fundamental element of statutory disregard of freedom of contract. Effect had to be given to the principle of equilibrium referred to under (*a*).

The dissenting judgment of Luxmoore, L.J., may be said to be based on two things: the well-known provision (in s. 15 of the 1920 Act) defining the rights and duties of your statutory tenant, and the absence of proper machinery for effecting the transfer, which is not included in the list set forth in s. 2, *ibid.* "The amount by which the increased rent of a dwelling-house . . . may exceed the standard rent shall, subject to the provisions of the Act, be as follows . . ." There was no machinery for transfer *in invitum*, though the expressions "landlord" and "tenant" in s. 2 (3) were not limited to original parties. The learned lord justice referred to the statutory form of notice (required by s. 3 (2)) to be found in Sched. I (now superseded by Form A in Pt. I of Sched. I to the Rent Restrictions Regulations, 1940): there was nothing in it which would meet the case of an increase such as was contended for.

In connection with the above, I think reference might be made to a passage from the judgment of Maugham, L.J., in *Phillips* v. *Copping* [1935] 1 K.B. 15 (C.A.). That case decided (overruling *Dufty* v. *Palmer* [1924] 2 K.B. 35) that rent might be increased *to* the amount of the standard rent. This, of course, would not require a notice under s. 3 (2); but it is of interest that Maugham, L.J., said: "To my mind subs. (2) is dealing only with increase permitted by the Act in s. 2, this view being borne out by the form contained in the schedule . . ." I think it is right to say that "increases permitted by . . . s. 2" meant those set out *seriatim* in subs. (1) of that section, in other words, those referred to by Luxmoore, L.J., in the recent case.

(*d*) I cannot develop this point at length, but would mention that the thought was inspired by the apparently uncritical assumption by everyone taking part in *Winchester Court, Ltd.* v. *Miller* that if a tenant was not responsible for repairs, the landlord must be. Those interested will find that Atkin, L.J., had a good deal to say on the point in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), at pp. 147, 148. It may well be that if the matter had been gone into in the recent case it would have been held that though no "liability" was transferred, a "burden" was.

To-day and Yesterday.

LEGAL CALENDAR.

August 21.—In March, 1826, Edward Gibbon Wakefield, being minded to make his fortune by marrying an heiress, decoyed fifteen-year-old Ellen Turner from her boarding school and by telling her a tale that her father was financially ruined, persuaded her that she must marry him at Gretna Green; only on this condition, he said, would his uncle, whom he represented to be a Kendal banker, consent to save her father's credit. In fact, her father, who had large property in Cheshire, was in no difficulty at all. When Wakefield had reached Calais with the girl he wrote informing her family in the expectation that they would accept the situation. They, however, took her away from him, while he, on his return to England, was arrested, being subsequently admitted to bail in a personal recognisance of £2,000 and with two sureties to the amount of £2,000 each. The trial was due to come on at the Lancaster Assizes on the 21st August, 1826, and public curiosity filled the court to excess, the ladies predominating, but, to everyone's disappointment, the defendant did not appear and consequently his recognisances were estreated. Seven months later he was tried, convicted and condemned to three years' imprisonment. In gaol he studied the problems of colonisation and prepared himself for a historic career. It was he who revolutionised the administration of Australia and brought New Zealand under the British flag.

August 22.—In spring, 1751, the crier of Hemel Hempstead in Hertfordshire was given the following unofficial notice to announce: "This is to give notice that on Monday next a man and a woman are to be publicly ducked at Tring in this county for their wicked crimes." The threatened persons were a harmless old couple, John and Ruth Osborne, whom some of their neighbours had come to suspect of witchcraft. The overseer of the parish sent them to the workhouse for safety, and the master, in turn, hid them in the vestry-room belonging to the church, but a mob of some thousands broke into the workhouse and started such a dangerous riot that in the end they had to be delivered up. They were dragged to a pond called Marlston Mere, stripped, ducked repeatedly, and so brutally ill-used that the woman died on the spot and her husband soon after. Thomas Colley, one of the ringleaders, who had played a leading part and had collected money from the populace for the sport he had shown them was convicted of murder at the Hertford Assizes. On the 22nd August, 1751, he was taken from St. Albans Gaol at five in the morning riding in a chaise with the hangman. He reached the place of execution about eleven, his wife and daughter taking leave of him and the parson of Tring attending; he died with penitence. His body was afterwards hung in chains at Gubblecut near the place of his crime.

August 23.—After Edward I had made Scotland a vassal state, awarding the crown to John Balliol, national resistance for ten years centred round Sir William Wallace, "the peerless Knight of Elleslie," who now, as commander of "the army of the Commons of Scotland," now as Guardian of the Kingdom and now as a guerrilla chief waged unremitting war against the English. Though he beat them at Stirling Bridge, he was himself defeated at Falkirk, but it was only after another seven years that he was betrayed into their hands and brought to London in chains. On the 23rd August, 1305, he was taken to Westminster Hall to be tried as a traitor. Though he asserted that he could not be a traitor to the King of England since he never swore fealty to him and was not his subject, he was condemned to death and executed at Smithfield the same day in circumstances of particular atrocity; he was only in his middle thirties. Next year Robert Bruce was crowned King of Scotland.

August 24.—In June, 1808, Major Alexander Campbell and Captain Alexander Boyd, both of the 21st regiment of foot, fought a duel. Boyd was fatally shot and his dying words were: "You have hurried me. I wanted you to wait and have friends. Campbell, you are a bad man." On his trial at Armagh Campbell was found guilty of murder, and on the 24th August he was hanged. A vast crowd had collected when he was led out just as the clock struck twelve. All the soldiers present took off their caps and the sound of shrieks and tears burst from several parts of the concourse. After hanging the usual time the body was put into a waiting hearse.

August 25.—On the 25th August, 1736, there was tried at Rochester "a soldier who pretended to cure a boy of an ague and, thinking to fright it away by firing his piece over the boy's head, levelled it too low and shot his brains out." He was acquitted.

August 26.—On the 26th August, 1737, there were executed near Exeter John Brice for murdering his wife, Benjamin Baker for highway robbery, and John Collins, a thatcher, for murdering Jane Upcot, a fisherwoman, at Harledown; he had cut off her head and taken out her heart, which he fixed on top of a spar-hook.

August 27.—On the 27th August, 1899, Sir Henry Hawkins, who in the previous year had resigned his place as a judge of the Queen's Bench Division, was raised to the peerage by the title of Baron Brampton of Brampton in the County of Huntingdon. During the next three years he sat occasionally to hear appeals to the House of Lords or the Judicial Committee of the Privy Council, including *Allen* v. *Flood*, the Taff Vale Railway case, and *Quinn* v. *Leatham*. During his twenty-two years in the Queen's Bench Division he had few rivals as a criminal judge. Though in most respects severe, he favoured light punishments for first offences. He had a profound hatred of cruelty and was not sparing in cases of serious and deliberate outrages to person or property.

SEAT OF JUDGMENT.

There has lately been bequeathed to the Taunton Castle Museum a chair which was one of those that stood on the dais in the Assize Hall at Taunton in 1685, when the "Bloody Assizes" were held there. In the Museum at Dorchester there is a chair which Jeffreys is supposed to have used during the trials in that town. At Taunton in those days the judges sat in the great hall of the Castle, where now is the Museum, the Crown Court at one end and the Civil Court at the other. Jeffreys and his brethren spent two working days at Taunton, the 18th and the 19th September. On the first day 382 prisoners pleaded guilty and three were tried and convicted; on the second day 117 pleaded guilty and three were tried and convicted. Henry Muddiman, the journalist, in one of his newsletters gives the following estimate of the ultimate fate of the Taunton prisoners: "Of those in the Castle, to be transported 144, to be executed 68 and to be pardoned 11. Of those in Taunton Bridewell, to be transported 56, to be executed 54, to be pardoned 7. Of those in the gaol at Taunton, to be transported 45, to be executed 20 and pardoned 3." That those executed were intransigent rebels may be judged from the account of Sir Charles Lyttleton written from Taunton a week after the death of nineteen of them: "Those who suffered here were so far from deserving any pity, at least most of them, and those of the best families . . . that they showed no show of repentence, as if they died in an ill cause, but justified their treason and gloried in it."

Obituary.

MR. E. FAIL.

Mr. Edward Fail, solicitor, of Stepney, E.1, has been killed by enemy action. He was admitted in 1924, and the following tribute, by Mr. Claud Mullins, appeared in *The Times* on 16th August last: "Mr. Edward Fail, killed by enemy action, is a sad loss to justice in London. He doubtless had other kinds of work, but he was a model police court solicitor. He never mistook a magistrate for a jury, never took a false point; he knew his law and was always both brief and courteous. He was a man of great charm."

MR. W. J. LARK.

Mr. Walter James Lark, solicitor, of Highgate, N.6, died recently, aged seventy-four. He was admitted in 1913.

MR. A. H. MARKS.

Mr. Arthur Houlton Marks, solicitor, of Messrs. Coote & Co., solicitors, of Lincoln's Inn Fields, W.C.2, died recently, aged forty-four. He was admitted in 1924.

MAJOR J. D. A. SYRETT.

Major John David Alfred Syrett, Welsh Guards, elder son of Mr. Herbert S. Syrett, C.B.E., solicitor, was killed in action last month, aged twenty-eight. He was educated at Stowe and Trinity College, Cambridge, where he graduated in law. After leaving Cambridge he was articled to his father, but forsook the legal profession to take a regular commission in the Welsh Guards.

Our County Court Letter.

Schoolmaster's Length of Notice.

IN *Planton* v. *Morris*, at Birmingham County Court, the claim was for £200 as damages for wrongful dismissal. The plaintiff's case was that he was engaged as a teacher at Greenmore College at a salary of £280 per annum, payable weekly. This was confirmed by letter of the 29th April, 1944. The defendant subsequently wrote (on the 26th May, 1944) that it was impossible to retain the plaintiff's services. The letter added: "The additional class I was hoping to form has not materialised, and whilst I must have an additional tutor available at Priory Road, I feel that I must have one who can specialise in the sports, physical training and social side of the college rather than on the academic side. This in no way reflects on the work you have done for the college during the short time you have been with us, which is much appreciated, and I hope that if in the near future we are able to start a new form, and you are still available, you will be able to return to us." The defendant's case was that the plaintiff was engaged temporarily, and was only entitled to a week's notice, which had been given. His Honour Judge Dale observed that, although the plaintiff was alleged to have been engaged temporarily, no time limit was given and nothing was said as to how long the engagement would go on. There was nothing in the letters of appointment and dismissal suggesting a temporary engagement. It was, in fact, an ordinary arrangement to employ the plaintiff as schoolmaster. The fact that he was paid weekly did not carry the matter any further. A schoolmaster required considerable notice. The plaintiff's first reasonable opportunity of obtaining employment would be in September, and, whether there should be six months' notice or not, it should be notice to cover the period of four months from the time the plaintiff had notice. Judgment was given for the plaintiff for one-third of a year's salary, viz., £90 and costs. A stay of execution was granted on the money being paid into court.

Sale of Diamond Ring.

IN *Lewis* v. *Briggs*, at Birmingham County Court, the claim was for £19 as damages for fraudulent misrepresentation on the sale of a diamond ring. The plaintiff's case was that on the 13th September, 1943, he bought the ring from the defendant in a hotel for £20. On examining the ring later, the plaintiff discovered it was paste, and worth about £1. The defendant's case was that in September the ring was a diamond ring as warranted. On being produced later, it did not contain the same stone. The original stone in the ring contained a little black speck, which was missing from the stone now in the ring. His Honour Judge Dale observed that anyone looking at the ring could see it was a dull stone. The only explanation was that there had been a mistake. Without suggesting the mistake was dishonest, the proper decision was that the plaintiff had not made out his case in proving that the ring was the one sold to him. Judgment was given for the defendant, with costs.

Kick from Horse.

IN *Gullen* v. *Prosser*, at Malvern County Court, the claim was for £52 as damages for personal injuries caused by a kick from the defendant's horse. The plaintiff's case was that on 22nd April, in company with his wife and child, he was walking along Sherrards Green Road, which crosses a common belonging to the Malvern Hills Conservators. A horse was grazing on the common, and, as the plaintiff passed, the horse appeared to take fright. It lashed out, and the plaintiff threw himself on to his child to protect her. He was then kicked on the thigh. A neighbouring householder came to his assistance, and the plaintiff, being unable to stand, was taken to hospital. He was an in-patient for twenty-four hours, was in bed at home for a fortnight, and lost three weeks' wages as an electrician, viz., £9 a week. The householder's evidence was that the horse was temperamental, and another neighbour stated that the horse had often lashed out at children, and she had warned her own children to keep away from it. A third neighbour's evidence was that the horse had been on the common for a number of years, and it was not safe for children to approach. The horse had once run the defendant's wife into the hedge. The defendant's case was that the horse was twelve years old, and he had bought it six years ago, with a warranty that it was quiet and safe. It had since been turned out on the common every day, and no complaint had been received before 22nd April. The plaintiff must have interfered with the horse on that day. Corroborative evidence that the horse was not vicious was given by the defendant's wife, who denied that it had ever run her into the hedge. A ranger, employed by the conservators, stated that the horse was quiet, and similar evidence was given by a farmer who had occasionally borrowed it. His Honour Judge Roope Reeve, K.C., observed that there was no dispute about the plaintiff having been kicked. In order to succeed in the action, however, the plaintiff would have to prove (1) that the horse had a vicious propensity, and (2) that the defendant knew of such propensity. This was the origin of the maxim that a dog was entitled to one bite. There was no evidence that the defendant knew of the vicious propensity, through any previous occurrence of a similar nature, or anything upon which

he could base a knowledge or suspicion that the horse was dangerous. Judgment was given for the defendant, with costs. Compare *Glanville* v. *Sutton* [1928] 1 K.B. 571.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 22, Chancery Lane, W.C.2 and contain the name and address of the subscriber, and a stamped addressed envelope.

Will—Settlement—DEVISE SUBJECT TO THE RIGHT OF ANOTHER TO OCCUPY PERSONALLY TWO (UNDEFINED) ROOMS—POSITION.

Q. X died after 1925 leaving by will M and N his executors, and house property and, separately, land, to A, but saying after the devise of the house, "but I declare that my sister B is to have the sole use and occupation of two rooms therein for such period as she may wish free of rent and other outgoings or duty." Does this inevitably make the house property settled, and in such case in whose favour is the vesting assent to be made, or is one assent in favour of A possible in respect of house and land, with a contemporaneous agreement between A and B as to the two rooms?

A. This is a most difficult "Point." It is to be noted that no *specific* rooms are allocated for the sister's occupation. It may be that there is a settlement in respect of which no one person is or has the powers of a tenant for life. In that case the vesting assent would go to the trustees of the settlement as statutory owners (S.L.A., 1925, s. 23). On another view, it may be a question of settled land held in trust for persons entitled in possession in undivided shares, with the result that there should be an assent to the trustees of the settlement upon the statutory trusts (S.L.A., 1925, s. 36). Yet, again, it may be a case where S.L.A., 1925, s. 20 (1) (ix) is in point, in which event A would be entitled to the vesting assent. In view of the uncertainty of the position, and with a view to taking no action which might mar or raise difficulties on the title to the property, we suggest that it would be advisable to clarify the position. B might, for instance, be approached to release all her interest in consideration of the grant to her of a lease of two rooms (with means of access and (let us say) right to user of bath sanitation and the like) for sixty years if she shall so long live, with a provision for cesser of the term if in any one year she fails to reside in the rooms for less than nine calendar months. In view of such cases as *Re Acklom* [1929] 1 Ch. 195, and *Re Patten* [1929] 2 Ch. 276, the sister, B, should be separately advised. The way would then be open for an assent to A absolutely.

Assent under Section 36 of Administration of Estates Act, 1925.

Q. A testatrix by her will gave for his own use and benefit absolutely (free of duty) to X—one of her employees—a small freehold dwelling-house belonging to her and of which he for some years had been tenant. She died last November, probate being granted in January last to her executors and the assent by them in X's favour is dated 19th May, 1944. X continued to pay his weekly rent, which included rates, totalling altogether 9s. weekly, up to the date of the assent. Rates up to the 31st March, 1944, had been paid by the testatrix prior to her death. The rate demand note for the current year from 1st April, 1944, has now come to hand. What is the position as regards both rent and rates as from the date of death and whose responsibility are they, also the 1st July war damage instalment? The executors have paid property tax on the house apportioned to the 19th May, 1944, the "assent" date. Would X be entitled to reclaim the tax, assuming, of course, his means entitled him to do so? Will the assent be retrospective to the date of death and so free X from all rent from the death? Should X pay anything towards the legal costs in connection with the assent, having in mind The Law Society's opinion on p. 574 of the 1937 Digest?

A. The assent relates back to the death (s. 36 (2)). As the testatrix had paid the rates up to a date after her death, and as the will speaks from the death, it is considered X is entitled to the benefit of that payment. X is liable to pay a proportion of the property tax from date of death to 5th April last and any other landlord's outgoings, if there are any, paid by the executors and to be credited with and repaid the balance of the rent he has paid, the rent of the week in which the death occurred being apportioned. He must pay the war damage contribution, since by the relation back of the assent, he was owner on 1st January. The cost of assent is usually charged to residuary estate.

Books Received.

Tax Cases. Vol. XXV. Parts III and IV. London: H.M. Stationery Office. 1s. each, net.

The Modern Law of Real Property. Fifth Edition by G. C. CHESHIRE, D.C.L., M.A., of Lincoln's Inn, Barrister-at-law. 1944. pp. xliv, 878 and (Index) 70. London: Butterworth and Co. (Publishers), Ltd. 35s. net.

Burke's Loose-leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-law. 1943–44 Volume. Parts 7 and 8. London: Hamish Hamilton (Law Books), Ltd.

Detained for Questioning. By "SOLICITOR." 1944. pp. 8. London: The Haldane Society. 3d. net.

Oke's Magisterial Formulist. Second (Cumulative) Supplement to 12th Edition. By JAMES WHITESIDE, Solicitor. 1944. pp. viii, 124 and (Index) 12. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

"Free-of-Tax Annuities."

A subsidiary point of some interest may be referred to in connection with the article which appeared in our issue of 19th August at p. 285. Hitherto, the Scottish Court of Session has adopted a view of the position in the case of annuities granted free of income tax which is at variance with that of the English courts in *Re Pettit* and the line of cases following it: see *Richmond's Trustees* v. *Richmond* [1935] S.C. 585.

In *Cook's* case, it was accepted that the annuity in question fell to be dealt with on lines indistinguishable from that laid down in *Re Pettit*, which was cited by both Lord Normand and Lord Moncrieff in terms which would appear to imply acceptance of its soundness. The third member of the court, Lord Fleming, had previously intimated a similar view in a dissenting judgment delivered in *Richmond's* case, which was not cited by any of them in *Commissioners of Inland Revenue* v. *Cook*. It would seem to be open to question, therefore, whether the *Re Pettit* rule must be regarded, as hitherto, as being inapplicable in Scottish cases. In this connection, it is to be observed that the will in question was a Scottish instrument.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

E.P. 932. **Defence** (Summer Time) Regulations, 1939. Order in Council, Aug. 10, amending the Regulations.

E.P. 931. **Emergency Powers** (Defence) Act, 1939. Order in Council, Aug. 10, continuing in force the Act, as amended by subsequent enactments.

E.P. 911. **Essential Work** (Evacuation) Order, Aug. 2.

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No. 934. **Pensions** (Increase) Act (Extension) Order in Council, Aug. 10.

No. 913. **Police, England and Wales.** The Police (Appeals) Rules, Aug. 3.

E.P. 912. Police. The Temporary Constables (Emergency) Rules, Aug. 3.

No. 914. **Trading with the Enemy** (Custodian) (Amendment No. 1) Order, Aug. 10.

No. 915. Trading with the Enemy (Foreign Currency Accounts) Order, Aug. 10.

No. 810. Trading with the Enemy (Specified Persons) (Amendment) (No. 9) Order, July 28.

BOARD OF TRADE.

Companies Act, 1929. Company Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence, 19th Day. 19th May, 1944.

Notes and News.

Honours and Appointments.

Mr. CHARLES MATTHEW KNOWLES has been appointed Chairman of Cornwall Quarter Sessions. Mr. Knowles was called by the Middle Temple in 1903.

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The Board of Trade (Bankruptcy) Search Room has now been reopened at Room 714, Royal Courts of Justice, W.C.2. Forms for search should be obtained at Room No. 2, the above address, prior to application to search.

An ordinary general meeting of the Chartered Surveyors' Institution will be held on Monday, 28th August, at 3 p.m., when the discussion on the address, delivered at a previous meeting in July by Sir William Jowitt, K.C., M.P., Minister without Portfolio, on "The Government's White Paper on the Control of Land Use," will be resumed.

The Board of Trade have, with the approval of the Treasury, decided that in respect of the period beginning 3rd September, 1944, and ending 2nd December, 1944, the rate of premium payable under any policy under the Commodity Insurance Scheme shall continue to be at the rate of 5s. per cent. for three months (or 1s. 8d. per cent. per month).

Wills and Bequests.

Mr. G. W. Colenutt, solicitor, of Ryde, left £7,812, with net personalty £6,853.

Mr. T. Dodd, solicitor, of Longton, left £71,720, with net personalty £68,953.

Mr. L. J. L. Hughes, solicitor, of Kenilworth, left £100,487, with net personalty £89,328.

Mr. H. H. Monckton, solicitor, of Birmingham, left £40,009, with net personalty £39,814.

August 24.—In June, 1808, Major Alexander Campbell and Captain Alexander Boyd, both of the 21st regiment of foot, fought a duel. Boyd was fatally shot and his dying words were: "You have hurried me. I wanted you to wait and have friends. Campbell, you are a bad man." On his trial at Armagh Campbell was found guilty of murder, and on the 24th August he was hanged. A vast crowd had collected when he was led out just as the clock struck twelve. All the soldiers present took off their caps and the sound of shrieks and tears burst from several parts of the concourse. After hanging the usual time the body was put into a waiting hearse.

August 25.—On the 25th August, 1736, there was tried at Rochester "a soldier who pretended to cure a boy of an ague and, thinking to fright it away by firing his piece over the boy's head, levelled it too low and shot his brains out." He was acquitted.

August 26.—On the 26th August, 1737, there were executed near Exeter John Brice for murdering his wife, Benjamin Baker for highway robbery, and John Collins, a thatcher, for murdering Jane Upcot, a fisherwoman, at Harledown; he had cut off her head and taken out her heart, which he fixed on top of a spar-hook.

August 27.—On the 27th August, 1899, Sir Henry Hawkins, who in the previous year had resigned his place as a judge of the Queen's Bench Division, was raised to the peerage by the title of Baron Brampton of Brampton in the County of Huntingdon. During the next three years he sat occasionally to hear appeals to the House of Lords or the Judicial Committee of the Privy Council, including *Allen* v. *Flood*, the Taff Vale Railway case, and *Quinn* v. *Leatham*. During his twenty-two years in the Queen's Bench Division he had few rivals as a criminal judge. Though in most respects severe, he favoured light punishments for first offences. He had a profound hatred of cruelty and was not sparing in cases of serious and deliberate outrages to person or property.

SEAT OF JUDGMENT.

There has lately been bequeathed to the Taunton Castle Museum a chair which was one of those that stood on the dais in the Assize Hall at Taunton in 1685, when the "Bloody Assizes" were held there. In the Museum at Dorchester there is a chair which Jeffreys is supposed to have used during the trials in that town. At Taunton in those days the judges sat in the great hall of the Castle, where now is the Museum, the Crown Court at one end and the Civil Court at the other. Jeffreys and his brethren spent two working days at Taunton, the 18th and the 19th September. On the first day 382 prisoners pleaded guilty and three were tried and convicted; on the second day 117 pleaded guilty and three were tried and convicted. Henry Muddiman, the journalist, in one of his newsletters gives the following estimate of the ultimate fate of the Taunton prisoners: "Of those in the Castle, to be transported 144, to be executed 68 and to be pardoned 11. Of those in Taunton Bridewell, to be transported 56, to be executed 54, to be pardoned 7. Of those in the gaol at Taunton, to be transported 45, to be executed 20 and pardoned 3." That those executed were intransigent rebels may be judged from the account of Sir Charles Lyttleton written from Taunton a week after the death of nineteen of them: "Those who suffered here were so far from deserving any pity, at least most of them, and those of the best families . . . that they showed no show of repentence, as if they died in an ill cause, but justified their treason and gloried in it."

Obituary.

MR. E. FAIL.

Mr. Edward Fail, solicitor, of Stepney, E.1, has been killed by enemy action. He was admitted in 1924, and the following tribute, by Mr. Claud Mullins, appeared in *The Times* on 16th August last: "Mr. Edward Fail, killed by enemy action, is a sad loss to justice in London. He doubtless had other kinds of work, but he was a model police court solicitor. He never mistook a magistrate for a jury, never took a false point; he knew his law and was always both brief and courteous. He was a man of great charm."

MR. W. J. LARK.

Mr. Walter James Lark, solicitor, of Highgate, N.6, died recently, aged seventy-four. He was admitted in 1913.

MR. A. H. MARKS.

Mr. Arthur Houlton Marks, solicitor, of Messrs. Coote & Co., solicitors, of Lincoln's Inn Fields, W.C.2, died recently, aged forty-four. He was admitted in 1924.

MAJOR J. D. A. SYRETT.

Major John David Alfred Syrett, Welsh Guards, elder son of Mr. Herbert S. Syrett, C.B.E., solicitor, was killed in action last month, aged twenty-eight. He was educated at Stowe and Trinity College, Cambridge, where he graduated in law. After leaving Cambridge he was articled to his father, but forsook the legal profession to take a regular commission in the Welsh Guards.

Our County Court Letter.

Schoolmaster's Length of Notice.

IN *Planton* v. *Morris*, at Birmingham County Court, the claim was for £200 as damages for wrongful dismissal. The plaintiff's case was that he was engaged as a teacher at Greenmore College at a salary of £280 per annum, payable weekly. This was confirmed by letter of the 29th April, 1944. The defendant subsequently wrote (on the 26th May, 1944) that it was impossible to retain the plaintiff's services. The letter added: "The additional class I was hoping to form has not materialised, and whilst I must have an additional tutor available at Priory Road, I feel that I must have one who can specialise in the sports, physical training and social side of the college rather than on the academic side. This in no way reflects on the work you have done for the college during the short time you have been with us, which is much appreciated, and I hope that if in the near future we are able to start a new form, and you are still available, you will be able to return to us." The defendant's case was that the plaintiff was engaged temporarily, and was only entitled to a week's notice, which had been given. His Honour Judge Dale observed that, although the plaintiff was alleged to have been engaged temporarily, no time limit was given and nothing was said as to how long the engagement would go on. There was nothing in the letters of appointment and dismissal suggesting a temporary engagement. It was, in fact, an ordinary arrangement to employ the plaintiff as schoolmaster. The fact that he was paid weekly did not carry the matter any further. A schoolmaster required considerable notice. The plaintiff's first reasonable opportunity of obtaining employment would be in September, and, whether there should be six months' notice or not, it should be notice to cover the period of four months from the time the plaintiff had notice. Judgment was given for the plaintiff for one-third of a year's salary, viz., £90 and costs. A stay of execution was granted on the money being paid into court.

Sale of Diamond Ring.

IN *Lewis* v. *Briggs*, at Birmingham County Court, the claim was for £19 as damages for fraudulent misrepresentation on the sale of a diamond ring. The plaintiff's case was that on the 13th September, 1943, he bought the ring from the defendant in a hotel for £20. On examining the ring later, the plaintiff discovered it was paste, and worth about £1. The defendant's case was that in September the ring was a diamond ring as warranted. On being produced later, it did not contain the same stone. The original stone in the ring contained a little black speck, which was missing from the stone now in the ring. His Honour Judge Dale observed that anyone looking at the ring could see it was a dull stone. The only explanation was that there had been a mistake. Without suggesting the mistake was dishonest, the proper decision was that the plaintiff had not made out his case in proving that the ring was the one sold to him. Judgment was given for the defendant, with costs.

Kick from Horse.

IN *Gullen* v. *Prosser*, at Malvern County Court, the claim was for £52 as damages for personal injuries caused by a kick from the defendant's horse. The plaintiff's case was that on 22nd April, in company with his wife and child, he was walking along Sherrards Green Road, which crosses a common belonging to the Malvern Hills Conservators. A horse was grazing on the common, and, as the plaintiff passed, the horse appeared to take fright. It lashed out, and the plaintiff threw himself on to his child to protect her. He was then kicked on the thigh. A neighbouring householder came to his assistance, and the plaintiff, being unable to stand, was taken to hospital. He was an in-patient for twenty-four hours, was in bed at home for a fortnight, and lost three weeks' wages as an electrician, viz., £9 a week. The householder's evidence was that the horse was temperamental, and another neighbour stated that the horse had often lashed out at children, and she had warned her own children to keep away from it. A third neighbour's evidence was that the horse had been on the common for a number of years, and it was not safe for children to approach. The horse had once run the defendant's wife into the hedge. The defendant's case was that the horse was twelve years old, and he had bought it six years ago, with a warranty that it was quiet and safe. It had since been turned out on the common every day, and no complaint had been received before 22nd April. The plaintiff must have interfered with the horse on that day. Corroborative evidence that the horse was not vicious was given by the defendant's wife, who denied that it had ever run her into the hedge. A ranger, employed by the conservators, stated that the horse was quiet, and similar evidence was given by a farmer who had occasionally borrowed it. His Honour Judge Roope Reeve, K.C., observed that there was no dispute about the plaintiff having been kicked. In order to succeed in the action, however, the plaintiff would have to prove (1) that the horse had a vicious propensity, and (2) that the defendant knew of such propensity. This was the origin of the maxim that a dog was entitled to one bite. There was no evidence that the defendant knew of the vicious propensity, through any previous occurrence of a similar nature, or anything upon which

he could base a knowledge or suspicion that the horse was dangerous. Judgment was given for the defendant, with costs. Compare *Glanville* v. *Sutton* [1928] 1 K.B. 571.

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 22, Chancery Lane, W.C.2 and contain the name and address of the subscriber, and a stamped addressed envelope.

Will—Settlement—DEVISE SUBJECT TO THE RIGHT OF ANOTHER TO OCCUPY PERSONALLY TWO (UNDEFINED) ROOMS—POSITION.

Q. X died after 1925 leaving by will M and N his executors, and house property and, separately, land, to A, but saying after the devise of the house, "but I declare that my sister B is to have the sole use and occupation of two rooms therein for such period as she may wish free of rent and other outgoings or duty." Does this inevitably make the house property settled, and in such case in whose favour is the vesting assent to be made, or is one assent in favour of A possible in respect of house and land, with a contemporaneous agreement between A and B as to the two rooms?

A. This is a most difficult "Point." It is to be noted that no *specific* rooms are allocated for the sister's occupation. It may be that there is a settlement in respect of which no one person is or has the powers of a tenant for life. In that case the vesting assent would go to the trustees of the settlement as statutory owners (S.L.A., 1925, s. 23). On another view, it may be a question of settled land held in trust for persons entitled in possession in undivided shares, with the result that there should be an assent to the trustees of the settlement upon the statutory trusts (S.L.A., 1925, s. 36). Yet, again, it may be a case where S.L.A., 1925, s. 20 (1) (ix) is in point, in which event A would be entitled to the vesting assent. In view of the uncertainty of the position, and with a view to taking no action which might mar or raise difficulties on the title to the property, we suggest that it would be advisable to clarify the position. B might, for instance, be approached to release all her interest in consideration of the grant to her of a lease of two rooms (with means of access and (let us say) right to user of bath sanitation and the like) for sixty years if she shall so long live, with a provision for cesser of the term if in any one year she fails to reside in the rooms for less than nine calendar months. In view of such cases as *Re Acklom* [1929] 1 Ch. 195, and *Re Patten* [1929] 2 Ch. 276, the sister, B, should be separately advised. The way would then be open for an assent to A absolutely.

Assent under Section 36 of Administration of Estates Act, 1925.

Q. A testatrix by her will gave for his own use and benefit absolutely (free of duty) to X—one of her employees—a small freehold dwelling-house belonging to her and of which he for some years had been tenant. She died last November, probate being granted in January last to her executors and the assent by them in X's favour is dated 19th May, 1944. X continued to pay his weekly rent, which included rates, totalling altogether 9s. weekly, up to the date of the assent. Rates up to the 31st March, 1944, had been paid by the testatrix prior to her death. The rate demand note for the current year from 1st April, 1944, has now come to hand. What is the position as regards both rent and rates as from the date of death and whose responsibility are they, also the 1st July war damage instalment? The executors have paid property tax on the house apportioned to the 19th May, 1944, the "assent" date. Would X be entitled to reclaim the tax, assuming, of course, his means entitled him to do so? Will the assent be retrospective to the date of death and so free X from all rent from the death? Should X pay anything towards the legal costs in connection with the assent, having in mind The Law Society's opinion on p. 574 of the 1937 Digest?

A. The assent relates back to the death (s. 36 (2)). As the testatrix had paid the rates up to a date after her death, and as the will speaks from the death, it is considered X is entitled to the benefit of that payment. X is liable to pay a proportion of the property tax from date of death to 5th April last and any other landlord's outgoings, if there are any, paid by the executors and to be credited with and repaid the balance of the rent he has paid, the rent of the week in which the death occurred being apportioned. He must pay the war damage contribution, since by the relation back of the assent, he was owner on 1st January. The cost of assent is usually charged to residuary estate.

Books Received.

Tax Cases. Vol. XXV. Parts III and IV. London: H.M. Stationery Office. 1s. each, net.

The Modern Law of Real Property. Fifth Edition by G. C. CHESHIRE, D.C.L., M.A., of Lincoln's Inn, Barrister-at-law. 1944. pp. xliv, 878 and (Index) 70. London: Butterworth and Co. (Publishers), Ltd. 35s. net.

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Notes of Cases.

APPEALS FROM COUNTY COURT.

Vickery *v.* **Martin.**

Lord Greene, M.R., and MacKinnon and Luxmoore, L.JJ. 5th July, 1944.

Landlord and tenant—Rent restrictions—Boarding-house—Letting as dwelling-house—Tenant letting to lodgers and living in house—Whether within Rent Acts—Rent and Mortgage Interest Restrictions Act, 1939 (2 & 3 *Geo.* 6, *c.* 71), *s.* 3 (3).

Plaintiff's appeal from a judgment of the learned county court judge sitting at Uxbridge in an action claiming an amount which she alleged she had overpaid to the respondent as being in excess of the standard rent permitted by the Rent Acts. The premises, from the point of view of rateable value, fell within the Rent Act, 1939, and the standard rent was, in fact, £35 per annum, while the contractual rent was £80 per annum. The appellant had sought to recover two years' difference betweeen these two figures. The house in question was a dwelling-house, and was so described in the tenancy agreement, which contained the usual covenants to be found in a lease of a dwelling-house, including one not to carry on or suffer to be carried on at the premises any trade, business or profession, but to use the premises as a private dwelling-house only. The landlady had, however, permitted the tenant to take in lodgers and she continued to permit the tenant's assignee to do so. At different times twenty different persons had lodged in the house, and there were three there at the time of the trial. The appellant had a sitting room, a bedroom, a spare room, a living room and a scullery for her own use, the rest of the house being used for the lodgers. The learned county court judge found that the appellant was on the premises solely for the purpose of carrying on the business of a boarding-house and her living there was entirely ancillary to that purpose. He dismissed the claim.

LORD GREENE, M.R., said that it might equally well be said that the taking in of lodgers was ancillary to her occupation of the house as a dwelling-house. His lordship then read s. 3 (3) of the 1939 Act, which provides, *inter alia*, that the application of the principal Acts to any dwelling-house shall not be excluded by reason only that part of the premises is used for business, trade or professional purposes, and referred to *Epsom Grand Stand Association, Ltd.* v. *Clarke and Wife* (1919), 63 SOL. J. 642; *Hicks* v. *Snook* (1928), 73 SOL. J. 43; 93 J.P. 55, at p. 56 (*per* Scrutton, L.J.). This house, his lordship continued, was unquestionably a dwelling-house and was the appellant's home, and hers exclusively, subject to such licences that she may from time to time grant to such persons as come as lodgers or guests in the house. If the learned judge's judgment was to be read as saying this was not a dwelling-house, then there was no justification on the evidence for so holding. It had been argued that the section must be read as meaning "and shall not be excluded by reason only that a non-substantial part of the premises is used as a shop or office or for business, trade or professional purposes." Having regard to the *Epsom Grand Stand* case, above, and *Hicks* v. *Snook*, above, which were before the Legislature when the subsection was enacted, it was unthinkable that the Legislature intended the word "non-substantial" to be read into it by judicial interpretation. It was only fair to the learned judge to say that he did not have before him the decision in *Hicks* v. *Snook*, above. *Colls* v. *Parnham* [1922] 1 K.B. 325, was six years before *Hicks* v. *Snook*, above, and the learned judge in that case misapprehended the meaning of the *Epsom Grand Stand* decision. The defendant had failed to show circumstances sufficient to exclude the house from the operation of the Act, and the appeal would be allowed.

MACKINNON and LUXMOORE, L.JJ., concurred.

COUNSEL: *G. R. Mitchison; W. A. L. Raeburn.*

SOLICITORS: *Elvy Robb & Co.; Church, Adams, Tatham & Co.*, for *Waugh, Brumell & Bally.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Mercer; Tanner** *v.* **Bulmer.**

Morton, J. 6th June, 1944.

Administration—Intestacy—Husband and wife killed in air raid—Presumption of survivorship—Chattels of husband destroyed in raid—Compensation moneys in respect of chattels—Devolution—Law of Property Act, 1925 (15 *Geo.* 5, *c.* 20), *s.* 184.

Adjourned summons.

M and his wife lived in a flat together which contained furniture and chattels belonging to M valued at £200. On the 29th April, 1942, the flat was destroyed by enemy action, M and his wife being killed. M was seventy-five years of age and his wife was sixty-nine. It was not known whereabouts in the flat they were when they were killed. According to the evidence it was possible that they had both been killed by a bomb, but their bodies showed no signs of injury, except those caused by burning. The furniture in the flat was totally destroyed by fire. M died intestate. This summons was taken out by his administrators and raised, first, the question whether his estate ought to be distributed on the footing that he predeceased his wife, and, secondly, whether any payment received in respect of the furniture and chattels under the War Damage Act, 1943, passed to the wife.

MORTON, J., said that apart from authority he would have had no hesitation in holding that s. 184 of the Law of Property Act, 1925, applied. He, of course, accepted the decision of the Court of Appeal in *In re Grosvenor* [1944] Ch. 138 (*ante*, p. 50), but it seemed to him that the cases where the court could find as a fact that two or more persons had died simultaneously must occur very rarely. In the present case he did not think it would be right for him to draw that inference. *In re Grosvenor*, *supra*, established that it was possible for two persons to die simultaneously. In this case, however, there were other possibilities. It was possible that these persons were stunned by the bombs and afterwards killed by fire. He saw no good reason for drawing the inference that they died simultaneously as a result of blast. He held, therefore, that s. 184 applied, and, indeed, he thought that it must apply to the great majority of cases where two or more persons were killed by bombing. He would declare that the estate of M should be distributed on the footing that he predeceased his wife. With regard to the second matter, the practical question was whether it had been established that these articles were destroyed after the death of M. The evidence wholly failed to establish that. In these circumstances, the wife's personal representatives had failed to establish what it was necessary for them to prove. In *Durrant* v. *Friend* (1851), 5 De G. & Sm. 343, a testator had given specific chattels, which he had insured, to a legatee. He took the chattels with him on a ship. The ship and the chattels were lost and the testator was drowned. Parker, V.-C., held that, as the testator and the chattels "perished together," the legatee had no interest in the chattels and consequently no interest in the insurance money. In the present case it had not been proved that the chattels in question perished after M's death. Therefore the claim of the wife's representatives failed, and any payment made under the War Damage Act, 1943, in respect of the chattels formed part of M's general residuary estate.

COUNSEL: *C. D. Myles; A. C. Nesbitt; H. E. Salt.*

SOLICITORS: *Ridsdale & Son*, for *Crombies, Wilkinsons & Robinson*, York; *Neve, Beck & Co.*, for *Smithson, Teasdale & Hewitt*, York.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Read *v.* **J. Lyons & Co., Ltd.**

Cassels, J. 28th April 1944.

Tort—Negligence—Rule in Rylands v. Fletcher—Plaintiff working in explosive factory—Injured by explosion while working there—Absolute liability of occupiers—Non-natural user of land—Volenti non fit injuria—Not applicable where plaintiff compelled to work in factory by Government direction.

A claim for damages for personal injuries alleged to have resulted from the defendants' negligence. The defendants were occupiers of a factory where explosive shells were made, and conducted it by agreement with the Ministry of Supply, by which they were to be deemed the employers of persons working at the factory. The plaintiff was an inspector in the employment of the Ministry of Supply, and was working at the factory. Whilst so working she was seriously injured by the explosion of a shell at the factory. The cause of the explosion was unknown. The plaintiff alleged that the defendants were liable because they knew the explosive shells which they were making were dangerous things, and the defendants contended in their defence (1) that the statement of claim disclosed no cause of action, and (2) that the plaintiff voluntarily incurred the risk of the explosion, and that the maxim *volenti non fit injuria* applied. The plaintiff had been directed by the Ministry of Labour and National Service to work at the factory, and Cassels, J., accepted her evidence that she would not have remained at such work unless compelled to do so.

CASSELS, J., said that he was satisfied that she did not voluntarily undertake the work upon which she was engaged, and that her claim did not fail by reason of the maxim *volenti non fit injuria* (*Smith* v. *Baker* [1891] A.C. 325; *Williams* v. *Birmingham Battery & Metal Co.* [1899] 2 Q.B. 338; *Baker* v. *James* [1921] 2 K.B. 674; and *Bowater* v. *Mayor, Aldermen and Burgesses of Rowley Regis*, 170 L.T. Rep. 314 (*per* Scott, L.J., at p. 314)). The other defence of "no cause of action" raised an argument of great importance. It was not denied that if a person outside the premises had been injured in the explosion the defendants would have been liable without proof of negligence (*Fletcher* v. *Rylands* (1866), 1 Ex. 265; L.R. 3 H.L. 330). Explosives were within the class of things dangerous in themselves (*Rainham Chemical Works, Ltd.* v. *Belvedere Fish Guano Co., Ltd.* [1921] 2 A.C. 465 (*per* Lord Buckmaster, at p. 471); *West* v. *Bristol Tramways Co.* [1908] 2 K.B. 14; *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.* [1914] 3 K.B. 722). In his lordship's view, the defendants were under a strict liability to the plaintiff in this case, and it was unnecessary to aver negligence because they were dealing with dangerous things which got out of control and did damage to the plaintiff. The plaintiff's position inside the factory, where she suffered the damage, made no difference to her rights. His lordship examined *Fletcher* v. *Rylands*, above, and said that the strict liability which that case attached to its circumstances caused it to be identified with animal cases, which were really further instances of the application of strict liability (*May* v. *Burdett* (1846), 9 Q.B. 101; *Besozzi* v. *Harris* (1858), 1 F. & F. 92; *Filburn* v. *People's Palace* [1890] 25 Q.B.D. 258, per Bowen, L.J., at p. 261; *Johnson and Wife* v. *Smithson* (1846), 15 M. & W. 563, *per* Platt, B., at p. 565; *Jones* v. *Festiniog Railway Co.* (1868), L.R. 3 Q.B. 733, *per* Blackburn, J., at p. 736; *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.* [1914] 3 K.B. 772, *per* Lord Sumner, at p. 779; *North Western Utilities, Ltd.* v. *London Guarantee & Accident Co., Ltd.* [1936] A.C. 108, *per* Lord Wright, at p. 118; "Pollock on Torts," 14th ed., p. 386). His lordship also referred to and distinguished *Ponting* v. *Noakes* [1894] 2 Q.B. 281, and *Howard* v. *Furness Houlder Argentine Lines, Ltd.* (1936), 2 All E.R. 781, in which stress was laid on the word "escape," and to *The Pass of Ballater* [1942] P. 112, *per* Langton, J, at p. 116. With regard to the argument that in the present case what would be a non-natural use of land in time of peace became a natural use of land in time of war, his lordship said that that argument was put forward in *Rainham's* case, *supra*, and ignored by the House of Lords. His lordship gave judgment for the plaintiff for £575 2s. 8d.

COUNSEL: *Paull*, K.C., and *J. H. C. Goldie; The Solicitor-General* (Sir David Maxwell Fyfe, K.C.), and *Valentine Holmes.*

SOLICITORS: *L. Bingham & Co.; The Treasury Solicitor.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]